AFR

18th June, 07

(53) (54)

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) No. 3319 of 2007

PETITIONER : D.S.Jain, S/o Late Shri G.L.Jain, aged about 65 years President, Industrial Court (CGIR Act) and Presiding Officer, Industrial Tribunal (Industrial Tribunal Disputes Act Raipur (Chhattisgarh)

VERSUS

RESPONDENTS : State of Chhattisgarh Through the Secretary, Department of Labour, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Single Bench : Hon'ble Justice Shri Satish K. Agnihotri.

Present: Shri Manindra Shrivastava, Sr. Advocate with Shri Devendra Patel, Advocate for the petitioner.
Shri Yashwant Singh Thakur, Govt. Advocate for the State.

ORDER

(Passed on 18th day of June, 2007)

1. The petitioner is the President of Industrial Court (CGIR Act) and Presiding Officer, Industrial Tribunal (Industrial Disputes Act), Raipur. The petitioner has filed this petition under Article 226 of the Constitution, on the basis of reasonable apprehension of issue of an order of recovery/removal from the office of the President, Industrial Court and Presiding Officer, Industrial Tribunal. The basis of his apprehension is newspaper reports annexed at Annexure P/8 and P/9.

2. Shri Manindra Shrivastava, learned Sr. Advocate appearing with Shri Devendra Patel, learned Advocate for the petitioner, submits that the petitioner had learnt from one member of Legislative Assembly in Chhattisgarh Vidhan Sabha that a question was raised in regard to the legality of his appointment wherein the Government justified the appointment of the petitioner being in accordance with law. However, it was stated that there are certain complaints made against him in which certain enquiries are pending. The petitioner has further apprehension on the basis of a news item appeared in "Dainik Bhaskar", Raipur published

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on 03.10.2006 (Annexure P/8) and news report published in "Jansatta", Raipur on 28.05.2007, that the Government is contemplating to take some action against the petitioner, which causes embarrassment.

3. Learned counsel clearly admits that neither any notice has been issued to the petitioner by the State Government nor any action has been taken against the petitioner by the State Government. However, in view of the above stated facts, the petitioner has reasonable apprehension that there may be some order for recovery/removal of him from the office he is holding at present. The contention of the petitioner on all other issues like competence of the State Government to take action against him undermines the independence of Labour Judiciary, cannot be considered at this stage as no action either has been proposed or has been taken against the petitioner. The petitioner has no materials to indicate that whether any show cause notice has been issued except that some information has allegedly been given by one member of the Legislative Assembly and certain newspaper reports, authenticity of which is also not established, have published news.

4. Learned counsel for the petitioner further relies on the decision of Supreme Court AIR 1954 SC 403 (Himmatlal Harilal Mehta Vs. State of M.P. & Others) in order to support his contention, that this petition is maintainable even on the alleged apprehension. The question of validity of the alternative remedy under provisions of C.P. and Berar Sales Tax Act, was in consideration, and as such the same is not applicable to the facts of the case.

5. A Constitution Bench of the Hon'ble Supreme Court, in the matter of K.K.Kochunni v. State of Madras (AIR 1959 SC 725) while considering

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the breach of the fundamental rights actual or threatened, of such right held that mere existence of an adequate alternative legal remedy cannot per se be a good and sufficient ground for throwing out a petition under Art. 32, if the existence of a fundamental right and a breach, actual or threatened, of such right is alleged and is prima facie established on the petition.

6. Subsequently, again a Constitutional Bench of Hon'ble Supreme Court in Chandra Shekhar Singh Bhoi v. State of Orissa 1972(1) Supreme Court Cases 63, while considering the apprehension of the petitioner with regard to the validity of the Act or a provision which was yet to be notified, has observed as under:

"…..It seems to us that the Courts ordinarily ought not to go into the question of the validity of an Act or a provision of an Act unless it has been brought into force. Till then, such a question would be academic. No body can be aggrieved by a provision of law which is dormant and which cannot be enforced. …."

7. In the mater of Chanan Singh v. Registrar, Co-operative Societies, Punjab and Others, (1976) 3 SCC 361, while considering the apprehension of the petitioner that the punitive action may be taken against the petitioner in the disciplinary proceedings still pending held as under:

"**5**. Other obstacles in the way of granting the appellant relief were also urged before the High Court and before us, but we are not inclined to investigate them for the short reason that the writ petition was in any case premature. No punitive action has yet been taken. It is difficult to state, apart from speculation, what the outcome of the proceedings will be. In case the appellant is punished, it is certainly open to him either to file an

appeal as provided in the relevant rules or to take other action that he may be advised to resort to..."

"6. We are satisfied that, enough unto the day being the evil thereof, we need not dwell on problems which do not arise in the light of the view we take that there is no present grievance of punitive action which can be ventilated in court...."

8. Further, in Mrs. Kunda S. Kadam v. Dr. K.K.Soman and Others, (1980) 2 SCC 355, wherein the question of law involved was as to whether the recommendation of the Public Service Commission without any proper order passed by the Municipal Corporation, can be challenged in a petition under Article 226 of the Constitution, observed that the time has not arrived for the Court to adjudicate upon the merits and that the writ petition itself was premature as it was open to the Municipal Corporation to accept the recommendation or not to accept the recommendation.

9. In view of the well settled principles of law that the Court should not adjudicate upon the apprehension which cannot be acted upon without proper notice or proper order. This court should not adjudicate upon the matters as the writ petition is premature. The case on hand is of similar nature as no action has been taken on the part of the State Government, and the petitioner has not established the existence of a fundamental right and a breach, actual or threatened, of such right.

10. Thus, this petition is dismissed as being premature, summarily.

Sd/-
Satish K. Agnihotri
Judge

Amit